IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10550 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

USHABEN PRAGJIBHAI KOLI WIFE OF DETENU KOLI PRAGJI @

Versus

DISTRICT MAGISTRATE

Appearance:

MR SHAKTISINH GOHIL for Petitioner

Mr.Uday Bhatt AGP for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE J.R.VORA

Date of decision: 02/12/2000

ORAL JUDGEMENT

#. By way of this petition under Article 226 of the Constitution of India petitioner Usahaben Pragjibhai Koli is challenging the order of detention of her husband Koli Pragji @ Pago Manjibhai under the Gujarat Prevention of

Anti-social Activities Act 1985 (PASA Act for short) .The District Magistrate, Bhavnagar in exercise of the powers conferred upon him under section 3(1) of the PASA Act passed the order of detention on 28.7.2000 for the detention of Koli Pragji @ Pago Manjibhai and the detenu was detained from 29.7.2000. The grounds of detention indicate that in all 5 crimes were registered against the detenu before the A division Police Station, Bhavnagar from 13.4.2000 to 18.6.2000 under sections 379 and 447 of the Indian Penal Code. These crimes denote that the detenu was indulging to commit theft of vehicles and telephone cables and other things. The detaining authority took into consideration the investigation of the above said 4 crimes. In addition to this, the detaining authority also considered the statement of witnesses who on assurance of secrecy of identity offered statements against the petitioner indicating that the petitioner was a hardned criminal and a head strong person indulging in thefts and and due to his fear, nobody was prepared to give evidence or statement against him. From the above material the detaining authority came to the conclusion that the petitioner and his associates were obstruction to public order and due to fear, nobody came forward to file any complaint against the petitioner and therefore, the detaining authority reached to subjective satisfaction that the petitioner was a dangerous person within the meaning of section 2(c) of the PASA Act.

#. Learned advocate Ms. Mita Panchal on behalf of the petitioner and Mr. Uday Bhatt learned AGP were heard.

#. The order of detention of the detenu was challenged on various grounds. It was vehemently urged that the order of detention is vitiated due to wrong exercise of powers under section 9(2) of the PASA Act by the detaining authority and keeping secret the identity of witnesses. It was urged that the contents as per the detaining authority were personally verified as is mentioned in the detention order and the contents on careful scrutiny of the statement was found correct according to the detaining authority. It was urged that there was no contemporaneous records to this and therefore, further detention of the detenu is vitiated.

#. In Jakirbhai Rahimbhai Nagori vs. District Magistrate, Mehsana reported in 1996(1`) GLH 300 this court observed that below the statement of witnesses the detaining authority had written one word viz. "verified" and claimed privilege under section 9)2) of the PASA Act. In the background of these facts after relying upon the

case of Koli Ashwin vs. State of Gujarat in Special Cri.Aplication No.1812 of 1993 this curt observed that claim of privilege made by the detaining authority under section 9(2) of the PASA Act was not genuine and the detenu was denied the opportunity of making effective representation by making and not supplying to him said details of statements of witnesses. The Court in Jakirbhai (Supra) relied upon the following observations made by this Court in the case of Koli Ashwin vs. State pf Gujarat:

" However, as is well established, for exercising the power under section 9(2) what is required for a detaining authority is that he must come to a subjective satisfaction himself and for that purpose, he must be able to point out either in the grounds or in the contemporaneous record that he had sufficient material before him to come to that subjective satisfaction. In the instant case, in the aforesaid background of the statement of each of the witnesses, when we turn to the statements for further material, which the detaining authority can make use of for arriving at a subjective satisfaction except for one word "verified" used by the Dy. S.P.who apparently has put it pursuant to an instruction received from the detaining authority for verifying the statement, there is no other material"

#. Reverting back to the facts of this case it is found that below the endorsement of Dy.S.P. the detaining authority only made endorsement regarding verification that "verified the contents" and thereafter the detaining authority has put his seal and signature. There is no contemporaneous record to denote that the detaining authority carefully considered the contents of the statements of witnesses to exercise the privilege granted under section 9(2) of the PASA Act. As stated in the above decision of this court in the case of Jakirbhai Nagori(Supra) such an exercise is merely an eye wash and it could not have been said that was genuine document and material before the detaining authority to claim privilege under section 9(2) of the PASA Act. Therefore, in this case also the claim of privilege made by the detaining authority under section 9(2) of the PASA Act is not genuine and to that extent the detenu was denied the opportunity of making effective representation by making and supplying to him other details of the statements of the witnesses. The continued detention of the detenu is therefore, null and void and in the result, the detention

order is required to be set aside.

#. In view of the above discussion, the detention order passed against the detenu by the District Magistrate Bhavnagar on 28.7.2000 under the PASA Act is hereby ordered to be set aside and quashed. The detenu Koli Pragji @ Pago Manjibhai is hereby ordered to be set at liberty forth if he is not required to be detained for any other purposes. Rule is made absolute. Direct Service.

(J.R.Vora.J)

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